

**REGULAR COMPENSATION STATUS
OF CERTAIN MOTOR VEHICLE USE**

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May 2006

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TIMELINE

July 23, 1945 The Massachusetts Legislature approves Chapter 658 of the Acts of 1945, creating Chapter 32 as we know it. Chapter 658 is entitled “An Act to Establish a Single Contributory Retirement Law for Public Employees.” Regular compensation is defined in the Act, for periods subsequent to December 31, 1945, as follows:

[T]he salary, wages, or other compensation in whatever form, lawfully determined for the individual service of the employee by the employing authority, not including bonus or overtime, but including evaluated maintenance as provided for in paragraph (1)(c) of section twenty-two and including any part of such salary, wages or other compensation derived from federal grants...

This section of the definition of regular compensation has remained largely unchanged for the past sixty years. The most recent edition of Chapter 32 provides as follows:

[T]he salary, wages or other compensation in whatever form, lawfully determined for the individual service of the employee by the employing authority, not including bonus, overtime, severance pay for any and all unused sick leave, early retirement incentives, or any other payments made as a result of giving notice of retirement, but including evaluated maintenance as provided for in paragraph (c) of subdivision (1) of section twenty-two, and including any part of such salary, wages or other compensation derived from federal grants except as provided in clause (xi) of paragraph (a) of subdivision (2) of section three;

January 5, 2001 In response to several inquiries, PERAC issues a memorandum instructing retirement boards to “consider the value of IRS-defined personal use of an employer-provided motor vehicle as regular compensation. Consequently, any amount included on the W2 which is consistent with IRS rules is regular compensation subject to retirement deductions.” Several categories of vehicles are exempted from this rule.

April 18, 2001 After examining the issue further, PERAC issues a memorandum allowing the value of personal use of an exempt vehicles to be regular compensation in certain

circumstances. PERAC writes, “As with the Commission’s memorandum on non-exempt vehicles, the regular compensation status of exempt employer-supplied vehicles is prospective from the date of this memorandum only. This policy should not be applied to those who have already retired.”

October 17, 2001 PERAC issues another memorandum to amplify on matters addressed in the previous memoranda.

October 18, 2002 After receiving an opinion from its special tax counsel, PERAC issues a memorandum informing boards that they may not accept any retirement contributions from retirees. PERAC instructs the boards to “immediately cease accepting all retirement contributions from retirees for any purposes.” Additionally PERAC directs that in regard to retired members attempting to use the value of a vehicle as regular compensation, Boards “must grant the appropriate amount of regular compensation for the personal use of an employer-supplied vehicle despite the lack of retirement contributions and recalculate retirement allowances as necessary.”

November 7, 2002 The Division of Administrative Law Appeals (“DALA”) issues the first of its decisions finding that the personal use of an employer supplied vehicle is not regular compensation.

January 7, 2003 PERAC informs the Boards that DALA has issued its determination that the value of the personal use of an employer-supplied vehicle is not regular compensation for retirement purposes. PERAC tells the Boards that this decision has been objected to and is not a final decision. “The Commission continues to assert that the value of the personal use of an employer-supplied motor vehicle is regular compensation as outlined in its previous memoranda...”

September 30, 2003 The Contributory Retirement Appeal Board “CRAB” issues decisions in two cases, determining that the personal use of an employer-supplied automobile is not regular compensation.

October 16, 2003 PERAC informs the Boards that CRAB has issued a determination that the value of a personal use of an employer-supplied vehicle is not regular compensation for retirement purposes. Though the decision may be overturned, PERAC instructs Boards to cease taking contributions related to motor vehicle usage, and should cease paying amounts of retirement allowances attributable to motor vehicle usage.

December 21, 2005 Essex County Superior Judge Riley determines that CRAB was incorrect in determining that G.L. c. 32, § 1 excludes the value of an employer-supplied motor vehicle from the definition of regular compensation.

JUDGE RILEY’S DECISION

The value of personal use of an employer-supplied motor vehicle may be considered regular compensation.

The Judge’s rationale for his determination:

- Neither the statute nor the regulations explicitly include or exclude from their definition of “regular compensation” the personal use value of an employer-supplied motor vehicle.
- The statutory definition of “regular compensation” does not limit compensation to monetary payments, but provides it can be in any form as long as it comports with the other requirements of Section 1.
- Had the Legislature intended to limit non-cash forms of “regular compensation” to housing and boarding benefits, it could and would have done so expressly, either in Section 1 or Section 22(1)(c).
- G.L. c. 152, § 1 excluded from the definition of “average weekly wages” a “day car.”
- G.L. c. 32, § 1 does not by its terms generally exclude from “regular compensation” the personal use value of an employer-supplied motor vehicle.

The Judge’s limitation on the applicability of this determination to individual members:

In order to be considered regular compensation, it must be established that a public employer determined that the personal use value of the employer-supplied motor vehicles constituted part of an employee’s regular compensation such that it was geared to services performed for the employer and that it was a regular, ordinary and recurrent aspect of the employment.

Four factors to be considered in establishing whether a particular use of a motor vehicle may be regular compensation:

1. Whether the employer authorized personal use
 - a. source of authorization
 - b. scope of authorization
2. The expressed purpose for such authorization
3. Employee's job description
 - a. normal work schedule v. on call service
 - i. on call: regular v. temporary or extraordinary
4. Whether use of vehicle part of employer's compensation.
 - a. The following documents may be helpful:
 - employment contract
 - deductions taken from payroll
 - W-2 form

DOCUMENTATION

If Four Factors met, and use is considered regular compensation, the employee must document the following:

- Extent of use for personal reasons
- Proof of fair market value
- Documentation of IRS annual lease value for relevant periods

In PERAC's most recent memo regarding this issue, we attached documents which we hope will be of assistance to retirement boards and to members in trying to sort out which use of a motor vehicle is regular compensation. Those documents, attached to the end of this outline, are:

- Annual Lease Value
- Worksheet for Computing the Value of an Employer-Owner or Leased Motor Vehicle
- Eligibility Questionnaire

RETROACTIVITY

In its memorandum dated April 18, 2001, PERAC informed the boards that the treatment of motor vehicle usage as regular compensation would be prospective only, from the date of the memo. Judge Riley disagrees, finding that everyone who retired after the effective date of Chapter 658 of the Acts of 1945 should be eligible for this benefit. As noted above, the effective date of the Acts was July 23, 1945.

Judge Riley's rationale for retroactivity, as stated in his decision:

Since 1945, the definition of regular compensation in G.L. c. 32, § 1, has included, "salary, wages, or other compensation in whatever form, lawfully determined for the individual service of the employee by the employing authority." See St. 1945, c. 658, § 1.

It follows: where a retired public employee can show that his or her personal use of an employer supplied motor vehicle constituted "regular compensation" under the standard set forth above, that employee is entitled to receive retirement benefits accordingly, as long as he retired after the effective date of St. 1945, c.658, § 1.

POST-RETIREMENT CONTRIBUTIONS OF RETIREES

- How to recalculate retirees' allowances, in light of the fact they cannot contribute to the system.
- What about retroactive tax consequences?

ICE MILLER

**WORKSHEET FOR COMPUTING THE VALUE OF AN EMPLOYER-OWNED OR
LEASED MOTOR VEHICLE**

(A Worksheet is required for each calendar year)

Member's Name _____ SSN# _____ - _____ - _____

Address _____

Department _____ Position _____

Calendar Year _____

Description of Vehicle (make, model and year) _____

Fair Market Value of Vehicle: _____

Annual Lease Value (From attached chart) _____

Total Number of months that personal use was authorized _____

From: _____ To: _____
(Date) (Date)

Note: Do not include as regular compensation any time during which your ability to use the vehicle for personal reasons was restricted, such as for personal vacations or recreational trips.

What percent of the use of the vehicle was personal use? _____

Instructions for calculating the amount of regular compensation:

Multiply the Annual Lease Value by the portion of the year that the vehicle was available to the member (one month = 8.33%). Multiply the result by the percentage of use that was personal use.

I certify that the above information is true and correct:

Signature: _____

ELIGIBILITY QUESTIONNAIRE

In order for the value of personal use of an employer-supplied motor vehicle to be included as regular compensation, a member must answer the following four questions in the affirmative and supply documentation to support the responses:

1. Did you have employer authorized personal use of an employer-supplied motor vehicle?

☐ Yes ☐ No

If yes:

Was the extent of this authorized use not for vacation or recreational trips, but for commuting, in order to be available to respond to emergencies, or for other services related to your employment?

☐ Yes ☐ No

2. Was the purpose of such authorized personal use also a benefit to the employer, such as to facilitate your response to work-related inquiries or return to duty when called, or in lieu of a higher salary or part of a negotiated compensation package (as opposed to a job perk linked to the prestige of the position)?

☐ Yes ☐ No

3. Was being on-call or available outside your normal work week a required or at least expected part of your job?

☐ Yes ☐ No

4. Do you have any documentation that the employer deemed your personal use “regular compensation?”

☐ Yes ☐ No

If yes, please indicate which of the following apply and attach a copy:

☐ Employment Contract

☐ Retirement Deductions

☐ W-2 form(s)

☐ Letter(s) or affidavit(s) from employer or municipal official familiar with your use of such vehicle

☐ Your personal affidavit

☐ Other (specify):

Annual Lease Value

Generally, you figure the annual lease value of an automobile as follows.

- 1) Determine the fair market value of the automobile on the first date it is available to any employee for personal use.
- 2) Using the following *Annual Lease Value Table*, read down column (1) until you come to the dollar range within which the fair market value of the automobile falls. Then read across to column (2) to find the annual lease value.

Fair market value. The fair market value of an automobile is the amount a person would pay to buy it from a third party, in an arm's-length transaction, in the area in which the automobile is bought or leased. That amount includes all purchase expenses, such as sales tax and title fees.

Annual Lease Value Table

(1) Automobile Fair Market Value	(2) Annual Value Lease
\$0 to 999	\$ 600
1,000 to 1,999850
2,000 to 2,999	1,100
3,000 to 3,999	1,350
4,000 to 4,999	1,600
5,000 to 5,999	1,850
6,000 to 6,999	2,100
7,000 to 7,999.....	2,350
8,000 to 8,999	2,600
9,000 to 9,999	2,850
10,000 to 10,999	3,100
11,000 to 11,999	3,350
12,000 to 12,999	3,600
13,000 to 13,999.....	3,850
14,000 to 14,999.....	4,100
15,000 to 15,999.....	4,350
16,000 to 16,999.....	4,600
17,000 to 17,999.....	4,850
18,000 to 18,999.....	5,100
19,000 to 19,999	5,350
20,000 to 20,999.....	5,600
21,000 to 21,999.....	5,850
22,000 to 22,999.....	6,100
23,000 to 23,999.....	6,350
24,000 to 24,999.....	6,600
25,000 to 25,999.....	6,850
26,000 to 27,999.....	7,250
28,000 to 29,999.....	7,750
30,000 to 31,999.....	8,250
32,000 to 33,999.....	8,750
34,000 to 35,999.....	9,250
36,000 to 37,999.....	9,750
38,000 to 39,999	10,250
40,000 to 41,999	10,750
42,000 to 43,999	11,250
44,000 to 45,999	11,750
46,000 to 47,999	12,250
48,000 to 49,999	12,750
50,000 to 51,999	13 250
52,000 to 53,999.....	13 750
54,000 to 55,999	14,250
56,000 to 57,999.....	14 750
58,000 to 59,999	15 250

For automobiles with a fair market value of more than \$59,999, the annual lease value equals (.25 X the fair market value of the automobile) + \$500.